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**BEFORE THE**
# FEDERAL COMMUNICATIONS COMMISSION
**WASHINGTON, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**MM Docket No. 91-221**

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| In the Matter of | ) |
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| Review of the Commission's Regulations Governing Television Broadcasting | ) ) ) ) |

**COMMENTS OF
THE ASSOCIATION OF INDEPENDENT
TELEVISION STATIONS, INC.**

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## SUMMARY


INTV urges the Commission to take a pragmatic and calculated approach and offers the following proposals designed to effectuate a significant, but cautious and measured relaxation of the rules:

### 1. National Ownership Limits

- The numerical limit on the number of television stations in which an entity may hold an attributable interest should be increased to 18.

- The cap on the audience reach of television stations in which an entity may hold an attributable interest should be increased to 30%.

- UHF stations' audience reach should continue to be assessed with a 50% reduction factor.

- The Commission should review the rule in three years with a presumption that the numerical limit and cap should be increased.

### 2. Duopoly Rule

- The applicable contour for determining prohibited overlap should be changed from the Grade B to the Grade A contour.

- A single entity should be permitted to hold an attributable interest in two stations in the same market (*i.e.*, with overlapping Grade A contours), provided one of the two stations is a UHF station.

- No additional requirement based on the number of stations in a market or on a minimum number of independent "voices" should be adopted.

### 3. One-to-a-Market Rule

- The rule should be repealed.

- Alternatively, a single entity should be permitted to hold an attributable interest in one station in each service in the same market and also should be permitted to hold an attributable interest in the maximum permissible number of radio *or* TV stations in the same market (but not both).

- If the Commission does not repeal the rule now, it should review the rule in three years with a presumption that the remaining restrictions be repealed *in toto*.

Whereas the significance of competition and diversity in the Commission's public interest equation signals caution and moderation, much of the rationale for the television ownership rules has disappeared. The video marketplace has changed significantly; broadcast television now is subject to considerable competition from numerous multichannel providers. Furthermore, economies of scale inherent in group ownership and combined local ownership will enhance the viability and vitality of independent stations and enable them to provide more and better service to the public.

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**COMMENTS OF THE ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC.**

The Association of Independent Television Stations, Inc. ("INTV"), by its counsel, hereby submits its comments in response to the Commission's *Notice of Proposed Rulemaking* [*sic*], FCC 92-209, (released June 12, 1992) [hereinafter cited as *NPRM*] in the above-captioned proceeding.[1] INTV is a non-profit incorporated association of independent television stations ( *i.e.*, broadcast television stations not affiliated with one of the three major national broadcast networks). INTV's membership includes over 100 of the nation's independent television stations.

[1]*See also* Comments of INTV (filed November 21, 1991) in the above-captioned proceeding [thereinafter cited as "INTV Comments"].

## A. The Television Ownership Rules Should Be Relaxed.

INTV urges the Commission to take a pragmatic and calculated approach and offers the following proposals designed to effectuate a significant, but cautious and measured relaxation of the rules:

### 1. National Ownership Limits

- The numerical limit on the number of television stations in which an entity may hold an attributable interest should be increased to 18.

- The cap on the audience reach of television stations in which an entity may hold an attributable interest should be increased to 30%.

- UHF stations' audience reach should continue to be assessed with a 50% reduction factor.

- The Commission should review the rule in three years with a presumption that the numerical limit and cap should be increased.

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- No additional requirement based on the number of stations in a market or on a minimum number of independent "voices" should be adopted.

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- If the Commission does not repeal the rule now, it should review the rule in three years with a presumption that the remaining restrictions be repealed *in toto*.

## B. THE SIGNIFICANCE OF DIVERSITY AND COMPETITION DICTATES A CAUTIOUS APPROACH.

Whereas ample reason exists to proceed expeditiously toward repeal of the television ownership rules, the significance of competition and diversity in the Commission's public interest equation signals caution and moderation. As the Commission has recognized:

> Basic to our form of government is the belief that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." (*Associated Press v. United States*, 326 U.S. 1, 20 (1945).) [footnote omitted] Thus, our constitution rests upon the ground that "the ultimate good desired is better reached by free trade in

> ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market." Justice Holmes dissenting in *Abrams v. United States,* 250 U.S. 616, 630 (1919).
>
> These principles, upon which Judge Learned Hand observed that we had staked our all, are the wellspring, together with a concomitant desire to prevent undue economic concentration, of the Commission's policy of diversifying control over the powerful medium of broadcasting. For, centralization of control over media of mass communications is, like monopolization of economic power, *per se* undesirable. The power to control what the public hears and sees over the airwaves matters, whatever the degree of self-restraint which may withhold its arbitrary use.
>
> It is accordingly firmly established that in licensing the use of the radio spectrum for broadcasting, we are to be guided by the sound public policy of placing into many, rather than a few hands, the control of this powerful medium of public communication.[2]

Therefore, the Commission ought proceed with caution.

## C. Despite the Importance of Competition and Diversity, Changes in the Video Marketplace Have Eliminated the Rationale for Significant Constraints on Television Ownership.

As important as the values of competition and diversity are, the Commission hardly can be frozen in reverent fear of diminishing diversity and competition. Continued insistence on *maximum* diversity

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[2]*Multiple Ownership Rules*, 22 FCC 2d 306, 310 (1970). As the court stated in *United Video v. FCC, supra*, 890 F.2d at 1181, "Increasing program diversity is a valid regulatory goal...," *citing Malrite TV of New York v. FCC,* 652 F.2d 1140, 1151 (2d. Cir. 1981), *cert. denied,* 454 U.S. 1143, 102 S.Ct. 1002, 71 L.Ed. 2d 295 (1982).

and competition at all costs has become a self-defeating policy.[3] As the Commission has recognized, diversity of broadcast ownership is a means to an end, not an end in itself:

> [T]he ultimate objectives of the duopoly rule, like our other ownership rules, have been to promote economic competition and diversity of programming and viewpoints in order to further the public interest.... Although one of the structural purposes underlying our multiple ownership rules is to encourage diversity in the ownership of broadcast stations, we have encouraged diversity of ownership as a means of promoting diversity of program sources and viewpoints, not as an end in itself.[4]

The Commission has acknowledged this in temporizing its pursuit of broadcast ownership diversity with other public interest concerns. In proposing changes to its duopoly rules in 1987, the Commission observed wisely that:

> Both the "duopoly" and "one to a market" rules, like our multiple ownership rules, reflect a balancing of factors that, to some extent, inevitably compete. On the one hand, they are intended to promote the dual goals of diversity of program service viewpoint and economic competition by encouraging diversity in the ownership of broadcast facilities. On the other hand, in developing these rules, we have recognized that diversification of ownership is not an absolute factor and that it must be balanced against the demonstrable benefits resulting from the group ownership of stations, such as promoting diversity of program service and aiding in the development of new broadcast services. [footnote omitted][5]

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[3]The Commission once had posited that "A proper objective is the maximum diversity of ownership that technology permits in each area." *Id.*, 22 FCC 2d at 311 .

[4]*Broadcast Multiple Ownership Rules*, 4 FCC Rcd 1723, 1723-24 (1987) [hereinafter cited as *BMOR*].

[5]*Broadcast Multiple Ownership Rules* (NPRM), 2 FCC Rcd 1138 (1987). Furthermore, broadcast service remains enormously beneficial to the public.

This approach is realistic in the current video marketplace and should be carried forward in this proceeding.

INTV's proposals reflect an appropriately pragmatic response, based on a realistic assessment of the state of the broadcast television industry and the functioning of the video marketplace. They also reflect and embrace the Commission's view that the video marketplace is very different from the broadcast marketplace confronting the Commission when the television ownership were adopted. Today's video marketplace is, indeed, characterized by a "plethora of new services and choices for video consumers." *NPRM* at ¶1.

This new and expansive competition to broadcast television is having profound and far-reaching effects on broadcast television. Broadcast television no longer is the lone purveyor of video programming to the home. The cable television industry masterfully exploited its virtually *gratis* use of television station signals to grow rapidly to a nationwide, multi-channel video provider. Other multi-channel services such as SMATV, MMDS, and backyard TVROs have proliferated, especially in areas unserved by cable. The majority of homes now have VCRs, and the prospects of operational DBS service appear greater than ever. Furthermore, broadcast television itself has expanded, led by rapid growth of independent television in the last decade.

Given more choices, consumers have watched more television, but divided their viewing time among more alternatives. Necessarily, broadcast television's share of viewing has declined with the advent of more and more alternatives. Whereas audience fragmentation may have plateaued for the near term, the effects and implications of channel compression, HDTV, DBS, and video dialtone accessed services undoubtedly will begin to be felt as the millennium approaches.[6]

This decline in audience shares has begun to dull the lustre of the industry's financial success. Real revenue growth on an industry-wide basis, according to the Commission's staff, has stagnated.[7] The downturn in the economy in the past 18 months also has taken its toll. The average independent suffered a revenue decline of 6.3% in 1991 versus 1990.[8] The average independent's profits fell 16.9% and its cash flow dropped by 5.1%. The invariable pattern of losses outside the largest markets also persists, as revealed in Figure 1, *below*. In short, the current and longer term financial outlook found and predicted by the staff appears accurate.[9] UHF stations also fared worse, as revealed in Figure 2, *below*.

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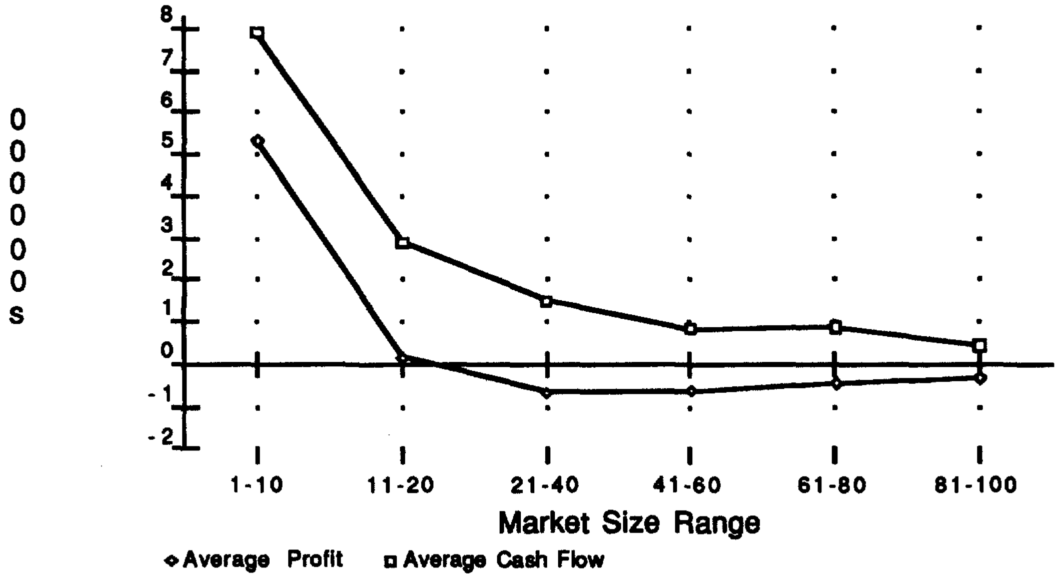
[6]Cable's era of rapid expansion is over now that over 90% of the nation's television households are passed by cable. If cable is to divert more audience from broadcast television stations, then it must either attract new subscribers from among those who already have decided not to subscribe to cable or by a greater shift in viewing away from broadcast programming to cable programming by existing subscribers.

[7]Setzer, Florence, and Levy, Johnathan, "Broadcast Television in a Multichannel Environment," OPP Working Paper Series, No. 26 (June, 1991), 6 FCC Rcd 3996 (1991) [hereinafter cited as "OPP Paper"].

[8]*NAB / BCFM 1991 Television Financial Report* at 64, 181.

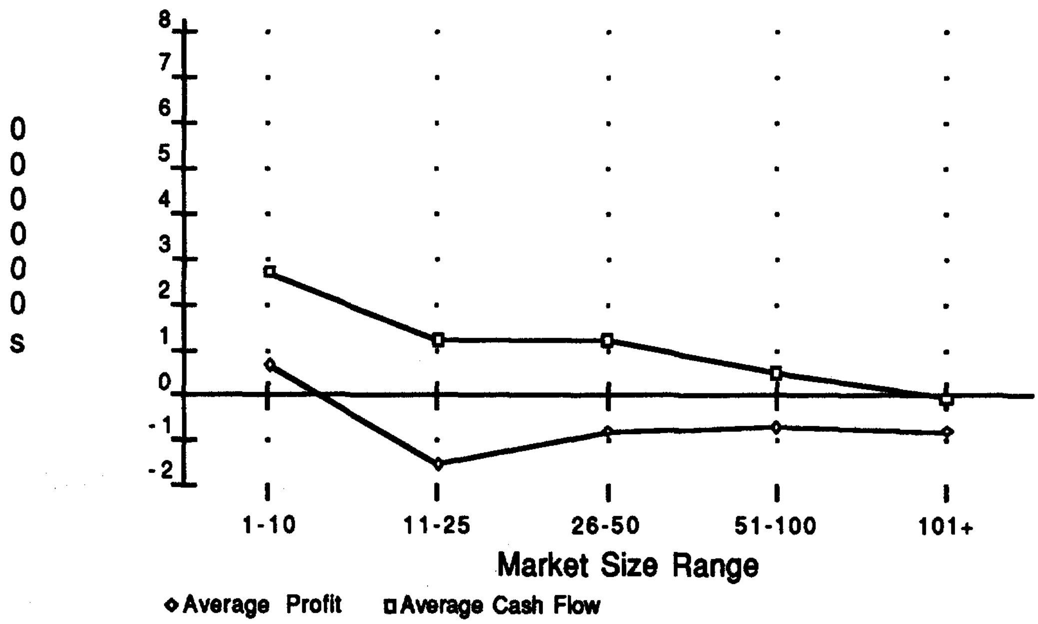
[9]*See* INTV Comments at 10-11.

**Figure 1**
**Average Independent Station Profit by Market Size**
**(1991)**




Source: *NAB/BCFM 1991 Television Financial Report*.

**Figure 2**
**Average UHF Independent Station Profit by Market Size**
**(1991)**




Source: *NAB/BCFM 1991 Television Financial Report*.

Broadcast television stations also may confront the need for substantial capital investment in the near future. First, the Commission is plowing ahead with a forced, accelerated schedule for implementation of over-the-air HDTV. Cost estimates for local station conversion to full HDTV operation have staggered many licensees, especially those outside the largest markets. Second, digital transmission and channel compression, regardless of the status of HDTV, also will require substantial capital outlays. To generate or raise capital, television stations will have to maintain a level of financial stability, which in turn will depend on efficient operation.

Moreover, a regulatory climate favorable to independent station stability and development has disappeared in large part. First, the Commission's "must carry" rules have perished in judicial review on two occasions.[10] As observed by the Commission staff, cable carriage was instrumental in the establishing coverage parity between new UHF independent stations and their VHF affiliate competitors.[11] On the other hand, as the Chairman has recognized, beginning operation without cable carriage is considerably more difficult, and suffering loss of cable carriage is fatal to an existing station.[12] In the absence of "must carry" rules, independent stations already have been denied carriage or dropped

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[10]Needlessly so, too. *See Report and Order*, MM Docket No 87-434, FCC 92-262 (released July 17, 1992), Separate Statement of Commissioner James H. Quello, dissenting in part.

[11]OPP Paper.

[12]Testimony of Chairman Alfred C. Sikes, before the Senate Subcommittee on Communications, June 20, 1991, tr. at 46-47.

from cable systems.[13] Other independent stations have been shifted from attractive VHF channel positions to less-accessible and less-visible high-numbered channels.[14] Further, no independent station has any assurance whatsoever that any cable system carrying its signal today will be carrying its signal tomorrow. More recently, the Commission has compounded the risk to independent stations by permitting networks to own cable television systems.[15] This added risk of entering and doing business as an independent television station did not exist when the Commission severely restricted television broadcast ownership patterns.

Similarly, Commission actions have increased the risk that independent stations will be denied access to popular syndicated programming, the virtual *sine qua non* of independent stations' financial success.[16] The recently relaxed network financial interest and syndication rules open the door to network acquisition and exploitation of syndication rights to popular off-network programming. The Commission itself has expressed doubts about the true efficacy of its new rules.[17] Independent stations had been spared this risk for the past 20 years, but now face losing an essential building block of their ability to operate successfully.

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[13]*See* Comments of INTV, MM Docket No. 90-4 (filed September 25, 1991); Reply Comments of INTV, MM Docket No. 90-4 (filed October 15, 1991).

[14]*Id.*

[15]*Report and Order*, MM Docket No. 82-434, *supra*.

[16]*Report and Order*, MM Docket No. 90-162, 6 FCC Rcd 3094 (1991).

[17]*Id.*, 6 FCC Rcd. at 3134-36.

Thus, the video marketplace and the regulatory framework in which it operates have undergone near revolutionary change since the Commission's television ownership rules were adopted. Broadcast television stations no longer are the only game in town in the exhibition of video programming, and a regulatory structure designed to promote broadcast service to the public has been supplanted by one promoting new and widespread competition. Broadcast television has felt the full impact of this new competitive and deregulated age.

None of this is to suggest that television broadcasting is on its last legs like an endangered dinosaur on an arid prehistoric plain. Broadcast television and the independent television sector hardly are courting extinction. Some short-term economic rebound is apparent. Moreover, unlike dinosaurs whose needs eclipsed the slow process of evolution, many broadcasters have been able to seize the initiative and take steps to adapt to life in a competitive environment. Thus, the ability of stations to adapt to their new and ever-changing environment is crucial to their ability to maintain a quality, responsive program service to the benefit of the viewing public.

In particular, as the Commission has recognized, regulatory barriers to adaptive business strategies must come down.[18] Each of INTV's proposals would lower regulatory barriers and enhance the ability of independent television licensees to adjust and adapt to shifting marketplace pressures

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[18]*NPRM* at ¶7 ("Regulations adopted before the advent of such competition may reduce the ability of broadcasters to respond competitively and to continue offering services that advance the public interest.")

and incentives in order to preserve their ability to offer an attractive array of programming and services to the public.

Whereas the rapid evolution of the video marketplace has eliminated much of the reason for each of the television ownership rules, relaxation of each particular rule will bring about its own particular array of benefits. Therefore, in addition to the above-stated arguments, INTV offers additional comment concerning each individual television ownership restriction.

### 1. Relaxation of the National Ownership Limits

When the Commission adopted the so-called "7-7-7" rule in 1953, only 271 television stations were in operation. Today, the nation is served by 1140 commercial stations and 360 noncommercial stations.[19] Over half of the commercial stations (583) are UHF stations.

More liberal numerical and audience reach limitations will permit more common ownership of stations. This will serve to shore up UHF television and promote more and better service. UHF television stations remain the weaker portion of the industry. UHF independent stations are the weakest segment.[20] The staff's conclusion that UHF stations will lead the sorting out of broadcast television in the future should come as no

[19]Whereas noncommercial stations are not competitors in the advertising marketplace, they do compete for viewers. They also contribute to outlet and viewpoint diversity, even to the extent that the Commission now considers noncommercial station signals in assessing comparative coverage among applicants for commercial stations.

[20]*See* Figure 2, *infra*, at 9.

surprise.[21] Equally devoid of surprise is the fact that growth of UHF television has fallen off perceptibly since 1987.[22] Increasing the ownership limits will enhance the ability of established and knowledgeable broadcast licensees to acquire new stations. They will bring expertise and funding which can instill new life into a weak UHF station.

The formation of new independent television groups and the expansion of existing independent groups by established licensees illustrate that the viability and the vitality of UHF stations can be assured in experienced hands. For example, Clear Channel Communications, a prominent radio owner has formed a group of successful UHF independent stations. Similarly, Tribune Broadcasting has acquired WPHL-TV, thereby assuring the station the benefits of the financial strength of a major group owner. Relaxation of the current caps will promote more such involvement of established, experienced licensees in the revitalization of sagging UHF stations.

Second, economies of scale inherent in group ownership will lower the viability threshold for new stations and enhance the staying power of existing stations. Again, the formation of newer independent television groups like Act III, Abry, River Cities, and Renaissance provides ample evidence of the benefits of multiple station ownership. They confirm that group ownership does benefit from efficiencies derived from sharing management, technical, and other personnel, as well as from efficiencies

[21] OPP Paper at 46.

[22] INTV Comments, Exhibit 2 at 5.

from group advertising sales and program acquisitions, as suggested by the Commission.[23] Among INTV's members, over three-quarters of the stations are group-owned and over half are owned by independent-only groups. Leaner operations are essential in the current video marketplace if stations are to survive and provide an attractive and responsive programming service. In short, relaxation of the limits would enhance program diversity and quality and outlet diversity.

INTV reminds the Commission that the local video marketplace is the locus of competition and diversity as perceived by the consumer. Relaxation of the national ownership limits could enhance competition and diversity in the local market. Indeed, in some markets where operation of a station would be unfeasible in the absence of group ownership efficiencies, a group owner's building a new station or rescuing a failing station would increase competition, viewpoint diversity, and outlet diversity in the market.

In light of these benefits, the Commission must go forward rather than let the *status quo* continue to debilitate the industry and block the real prospects for better television broadcast service to the public. A phased increase in the ownership caps would provide greater latitude for current licensee's wishing to expand to take advantage of the economies and efficiencies of group ownership, but still permit the Commission to evaluate the effects of increased limits on national ownership concentration on competition and diversity.

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[23] *NPRM* at ¶ 11.

INTV, therefore, proposes a modest relaxation of the rules with a three year review to permit elimination or further relaxation of the rules if no harm has occurred and no potential for harm can be shown. In the interim, the rules should provide (1) that an entity may hold an attributable interest in 18 broadcast television stations; (2) that an entity may hold an attributable interest in stations which reach no more than 30% of the television households in this country; and (3) that UHF stations' audience reach continue to be assessed with a 50% reduction factor. The Commission should review the rule in three years with a presumption that the numerical limit and audience reach cap should be increased or eliminated.

### 2. Relaxation of the Duopoly Rule

Competition and diversity also have flourished in the local video marketplace. In communities served by three affiliates in 1964, consumers now may elect from affiliates, independents, and an expansive array of cable channels, to say nothing of their VCR or TVRO. As noted by INTV in its previous comments in this proceeding:

> [T]he dilution of diversity would be considerably less perceptible than it might have been when the rules were adopted years ago. Since then, broadcast television has grown as have other video media, including cable television, home satellite dishes and video cassette recorders (VCRs). [footnote omitted] Thus, the margin for the "nth" source of programming has moved to a higher level.[24]

[24] INTV Comments at 26.

The impact on viewpoint diversity is considerably less worrisome when consumers may choose from among 30 or more program choices than when they were left to select among three local network-affiliated stations.

In today's video marketplace, over 90% of television households are passed by cable. The remaining households (as well as all cable households) also could receive the new multiplicity of channels (and then some) via a TVRO. No viewer need rely exclusively on broadcast service in order to obtain video programming. If a local cable system is providing 30 or more channels of programming from a number of different sources, allowing a single broadcast licensee to offer two channels over the air would pose only a marginal decrease in diversity. In short, programming, outlet, and viewpoint diversity in every local market has expanded greatly since 1964. The duopoly rules now must be evaluated in this new multichannel age.

Furthermore, economies of scale are greatest with respect to common ownership and operation of stations serving the same area. The following example illustrates how common operation of two UHF stations in a top 30 market would reduce overall costs by 24%. The annual expense of such a station is estimated at $6,225,000.00, as follows:

| | |
|---|---|
| Program license fees | $2,500,000.00 |
| Production & Operations | 800,000.00 |
| Promotion & Advertising | 800,000.00 |
| Sales | 1,325,000.00 |
| General & Administrative | 800,000.00 |
| Total | $6,225,000.00 |
| Two station total | $12,450,000.00 |

If the two stations were commonly-owned, however, numerous cost-savings would result from combined operation. First, the licensee could shift programming between stations, thereby maximizing utilization of all program episodes and eliminating waste from unused episodes. Estimated savings is 10%. Second, production and operational facilities and personnel could be shared. Estimated savings is 37.5%. Third, stations would share promotional personnel and facilities and enjoy better rates for external media advertising via quantity discounts. Estimated savings is 25%. Fourth, only one sales team would be needed to sell both stations. Estimated savings is 40%. Finally, overhead expenses could be shared (*e.g.*, office and studio facilities, single accounting staff, utility savings, etc.). Estimated savings is 25%. Thus, the annual expenses for each of the two stations when commonly owned would be as follows:

| | |
|---|---|
| Program license fees | $2,250,000.00 |
| Production & Operations | 500,000.00 |
| Promotion & Advertising | 600,000.00 |
| Sales | 800,000.00 |
| General & Administrative | 600,000.00 |
| Total | $4,750,000.00 |
| Two station total | $9,500,000.00 |
| Savings | $2,950,000.00 or 23.7%. |

Reductions of this magnitude *are* attainable and would greatly enhance the viability of two commonly-owned independent television stations. Only the Commission's rules prevent this sort of cost-savings today.

INTV, therefore, concurs that relaxation of the duopoly rule offers the most glittering opportunity for permitting stations to take advantage of efficiencies in operation.[25] Nonetheless, because local market competition is more acutely sensitive to local ownership combinations, some caution is mandated. Thus, INTV has proposed permitting common ownership of facilities serving the same market in situations where the benefits of joint operations will be the most definitive. Under INTV's proposal, a single licensee could own two overlapping stations, provided one of the stations was a UHF station. In essence, inherently weaker UHF stations could merge or a UHF station might be acquired by a VHF station. The weak unite or the strong helps the weak. In these scenarios, the efficiencies of joint operation might enable both weaker stations to survive and prosper or enable one weaker station to be propped up by a stronger licensee. Thus, stations which might otherwise have faltered would continue to provide service. On the other hand, the combination of two powerful VHF stations serving their same area would remain prohibited. Whereas these stations might well benefit from common ownership and operation, the combination doubtfully would yank either station back from the precipice of failure or degeneration. Furthermore, the combined strength of the two established VHF stations in a market would be overpowering *vis-a-vis* other stations or combinations in a market.

Again, from the perspective of the local viewer, an additional channel of programming has value. INTV has disagreed with the staff's assertion that the value of additional channels falls rapidly when large numbers of channels are available.[26] The value will reflect the type of

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[25]*NPRM* at ¶ 17.

[26]*See* INTV Comments, Exhibit 2 at 3.

programming available on the channel. For example, a general audience independent with attractive syndicated programming, feature films, and sports, will have considerable consumer value, especially in contrast with a new 24-hour cable channel devoted exclusively to horror movies or travel shorts. The value is also much higher for the nearly 40% of viewers who have chosen not to subscribe to cable or to whom cable remains unavailable.

Independent television's ability to provide that additional channel of a highly attractive programming will be enhanced if stations can take advantage of the massive efficiencies flowing from combined operation of two local stations.

In addition to limiting the scope of the rule to purely VHF combinations, the Commission also ought use the Grade A contour for purposes of establishing prohibited overlap. Changing the pertinent coverage contour for determining overlap from Grade B to Grade A also would facilitate more efficient operation and greater competitive parity between UHF independents and VHF affiliates. No reason exists to maintain the stricter Grade B standard. When the Commission first proposed a fixed contour, it proposed the Grade A contour.[27] The Commission considered the Grade A contour comparable to the contours proposed for AM and FM radio stations in terms of signal quality.[28] It acknowledged that use of the Grade B contour for television would be "a

[27] *Report and Order*, Docket No. 14711, 18 FCC 2d 1476, 1482 (1964).

[28] *Id.*

more restrictive policy."[29] Ultimately, the Commission elected to use the Grade B contour in lieu of the Grade A contour because (1) television had more impact than radio; (2) there were "many fewer" television than radio channels; and (3) regional concentration would be curbed, although indirectly.

Those reasons no longer justify reliance on the stricter Grade A contour. First, whatever the relative impact of television may be, the impact of *broadcast* television has been diluted by the advent of competitive multichannel media. Second, the number of video channels available to the public has increased. Whereas comparisons of the numbers of aural versus video channels available may vary from market to market, in no way could the Commission conclude today that "many fewer television channels" are available than radio channels. Again, over 90% of cable subscribers now are served by cable systems with 30-53 channels.[30] Nearly one-third of cable subscribers now are served by systems with 54 or more channels.[31] Today's video marketplace is a far cry from the video marketplace of 1964, when viewers were lucky to have service from three network affiliates and independent station service was a bonus reserved for the largest markets. Therefore, no basis remains for adhering to the restrictive Grade B contour. Use of the predicted Grade A contour is appropriate as long as any duopoly restriction remains in place.

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[29] *Id.* at 18 FCC 2d at 1483.

[30] *Television and Cable Factbook*, Cable & Services Vol. 60, Part II (1992) at G-65.

[31] *Id.*

An especially compelling example of the sort of situation in which a less restrictive contour (or no restriction at all) would be beneficial arises in hyphenated markets which include wide geographic areas. Powerful VHF stations may reach the bulk of the market area easily, while UHF stations can cover only a portion of the market. If a single licensee could operate two UHF stations, which together covered the entire market area, then that licensee would be a viable competitor to more-established VHF affiliates in the market. Shifting to the less restrictive Grade A contour may enable more licensees to achieve coverage parity in this manner.[32]

This arrangement is particularly beneficial, because, standing alone, neither station would be competitive or, perhaps, even viable. However, by combining facilities, one licensee would provide the market with a sound competitor which otherwise would not exist.

The Commission should refrain from adopting a "minimum voice" test with respect to application of the duopoly rule. As an example of such a criterion, the Commission has suggested that local station mergers be permitted only where six independently-owned stations remained in the market.[33] INTV submits that such a limitation is unnecessary and counterproductive. First, in an environment in which nearly all viewers have access to at least 30 channels of video programming from cable alone (to say nothing of a backyard dish or video store), local concentration

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[32]Again, of course, permitting UHF combinations, regardless of contour overlap, also would permit this same station alignment.

[33]*NPRM* at ¶20.